

L1479

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Licensed Application 5136)

JOHN MEIER, ET AL.

Licensees

OWEN W. BAUER

Protestant

Order: WR 79-24

Source: Unnamed Creek

County: Del Norte

ORDER APPROVING IN PART, PETITION TO ADD TO THE  
PLACE OF USE UNDER LICENSED APPLICATION 5136

BY THE BOARD:

Clifford G. Percy and Norman Restad (former licensees) having filed a petition to add to the place of use under licensed Application 5136 (License 1479); a protest having been received; the applicants and protestant having stipulated to proceedings in lieu of hearing as provided for by Title 23, California Administrative Code, Section 737; an investigation having been made by the State Water Resources Control Board pursuant to said stipulations; the Board, having considered all available information, finds as follows:

Substance of Licensed Application

1. Licensed Application 5136 allows diversion of 0.037 cubic foot per second from July 1 to September 1 for irrigation of two acres, and throughout the year as required for domestic use within Lots 1060 to 1070 of Block 27 of Bertsch Ocean View Tract.

Substance of Change Petition

2. The petition seeks to add Lots 1 through 4, Block 1 and Lots 1 and 2, Block 2 of Ocean View Tract No. 2 as additions to the place of use.

### Petitioners' Projects

3. Norman Restad, the previous licensee, built the present Percy residence (the proposed addition to the place of use) in 1964 and installed a one-inch pipeline from the house to the licensed 5,000 gallon storage tank. The Restads assigned one-half of the license to the Percys in May 1973 and the remainder to the Meiers in May 1975. The Meiers' place of use conforms with the license, but the Percys' does not.

4. The Meiers use water to meet the domestic needs of six people in a fully plumbed house; irrigate about one-half acre of lawn, pasture, and garden; and stockwater two cows. The Percys use water to meet the domestic needs of five people in a fully plumbed house, irrigate 5,000 square feet of lawn, and stockwater six head of cattle.

### Protest

5. Bauer protested the petition claiming that any increased use of water would injure him. He claims a riparian and pre-1914 appropriative right. He states that if the licensees will recognize his right of prior appropriation and his riparian rights, he will withdraw his protest. The McNamaras, the protestants' lessees, divert from two points on the stream on Miller-Rellim Lumber Company property below the licensed point of diversion. The water is piped across the Company's property and used to meet the domestic needs of seven people in a fully plumbed house and trailer and for stockwatering of 130 head of cattle.

### Effect of the Proposed Change on Legal Users of Water

6. Water Code Section 1702 states:

"Before permission to make such a change is granted the petitioner shall establish, to the satisfaction of the Board, and it shall find, that the change will not operate to the injury of any legal user of the water involved."

7. The record indicates that the quantity allowed by the license, and the quantity used under the license in the past is more than adequate for the proposed use and that there will be no increase in the quantity diverted during the irrigation season.

8. The protestants claim of use under a pre-1914 appropriative right, and the extent to which any such right may have been lost or diminished by non-use cannot be completely assessed on the basis of the current record. The existence of a riparian right, which may have been implied when the protestants place of use was severed from the stream, is likewise not susceptible to complete evaluation. The report of field investigation indicates a present diversion of 4,320 gallons per day. Approval of this change under the specified conditions will not impact upon any rights the protestant may have more adversely, if at all, than the existing license.

9. The proposed change will not operate to the injury of any legal user of the water involved.

Does the Proposed Change Initiate a New Right?

10. The uses on which the license was based, as reported in the 1934 inspection report, were as follows:

(a) Irrigation: Two acres of truck garden from June 1 through September 15.

(b) Domestic: Use year-round by four people in a fully plumbed house and stockwatering of two cows and some poultry.

11. Current uses are as follows:

(a) At licensed place of use:

1. Irrigation of  $\frac{1}{2}$  acre of lawn, garden and pasture.

2. Domestic use, year-round, by six people in a fully plumbed house and stockwater for two cows.

(b) At the proposed addition to place of use:

1. Irrigation of 5,000 square feet of lawn.
2. Domestic use, year-round, by five people in a fully plumbed house and stockwater for six head of cattle.

12. The proposed change during the irrigation season does not constitute the initiation of a new right. However, the proposed increase in domestic use during the remainder of the year exceeds the quantity on which the license was based and can only be accomplished by the filing of a new application.

#### Environmental Consideration

13. The State Board has prepared a Negative Declaration in accordance with the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) and the State Guidelines, and the Board has determined that the added place of use will not cause any significant adverse effect on the environment.

#### Record in this Matter

14. The records, documents, and data used in evaluating this petition are: Application 5136 and all relevant information on file therewith, particularly the reports on field investigation made on September 1, 1976, and October 17, 1977, and the Engineering Staff Analysis dated January 31, 1978; Board Decision 1283; and topographic maps published by the United States Geological Survey for the area.

Conclusions

15. From the foregoing findings, the Board concludes that the petition to increase the place of use should be granted in part, as set forth in the order following.

ORDER

IT IS HEREBY ORDERED that the petition to increase the place of use under License 1479 be granted during the period from July 1 to September 1.

IT IS FURTHER ORDERED that licensee shall install a meter in the pipeline leading to the Percy property, and monthly readings shall be submitted to the Board with the Report of Licensee.

Dated: August 16, 1979

/S/ W. DON MAUGHAN

W. Don Maughan, Chairman

/S/ WILLIAM J. MILLER

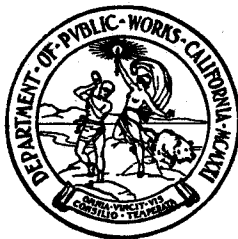
William J. Miller, Vice Chairman

/S/ L. L. MITCHELL

L. L. Mitchell, Member

/S/ CARLA M. BARD

Carla M. Bard, Member



STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS  
DIVISION OF WATER RESOURCES

# License for Diversion and Use of Water

LICENSE 1479

PERMIT 2655

APPLICATION 5126

ASSIGNMENT MADE

THIS IS TO CERTIFY, That **M. L. Goodwin of Crescent City, California,**

**has made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of an unnamed creek in Del Norte County**

tributary of **Pacific Ocean**

for the purpose of **domestic and irrigation uses**

under Permit **2655** of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from **July 30, 1926;**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **thirty-seven thousandths (0.037) cubic feet per second from about July 1st to about September 1st of each season and throughout the remainder of the year as required for domestic purposes.**

The point of diversion of such water is located **South one hundred (100) feet and East five hundred (500) feet from the North one-quarter corner of Section 36, T 16 N, R 1 W, H.B.M. and being within the NW 1/4 of NE 1/4 of said Section 36.**

A description of the lands or the place where such water is put to beneficial use is as follows:

**Domestic use and the irrigation of**

**1.75 acres within SE 1/4 of SW 1/4 of Section 26, T 16 N, R 31 W, H.B.M.**

**0.25 acre " SW 1/4 of SE 1/4 " " " "**

**2.0 acres, total.**

**Being also within Lots 1060 to 1070, inclusive, of Block 27 of Bertosh Ocean View Tract.**

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

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This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided*, however, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and *providing*, further, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs thereof; that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and *providing*, further, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; and *providing*, further, that when such municipality shall desire to use the additional waters granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public

Works of the State of California, this nineteenth  
day of July, 19 34.

[SEAL]

EDWARD HYATT  
State Engineer

By Harold Conkling  
Deputy

12/11/37

RECEIVED NOTICE OF ASSIGNMENT TO John W. + Alida M. Meier

12/8/38

RECEIVED NOTICE OF ASSIGNMENT TO Norman B. + Helen J. Restad

5/24/53

RECEIVED NOTICE OF ASSIGNMENT TO

Clifford M. + Peggy Ann

Perry

5-15-75 Interest of Norman B. + Helen Restad asgd to John + Edna Meier

LICENSE 1479

STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE  
TO APPROPRIATE WATER

ISSUED TO M. L. Goodwin

DATED July 19, 1934

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